

<b>TO:</b>  <b>Commissioner of Patents</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following Patents

<b>DOCKET NO.</b> <b>11-cv-01330-WYD-KMT</b>	<b>DATE FILED</b> <b>5/19/11</b>	<b>U.S. DISTRICT COURT</b> <b>FOR THE DISTRICT OF COLORADO</b>
<b>PLAINTIFF</b> Crocs, Inc.		<b>DEFENDANT</b> Skechers U.S.A., Inc.
<b>PATENT OR</b>	<b>DATE OF PATENT</b>	<b>HOLDER OF PATENT OR TRADEMARK</b>
1 <i>D610,784</i>		<b>Please see copy of Complaint attached hereto</b>
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

<b>DATE INCLUDED</b>	<b>INCLUDED BY</b> <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
<b>PATENT OR</b>	<b>DATE OF PATENT</b>	<b>HOLDER OF PATENT OR TRADEMARK</b>	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

<b>DECISION/JUDGEMENT</b>
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<b>CLERK</b>  <b>GREGORY C. LANGHAM</b>	<b>(BY) DEPUTY CLERK</b>	<b>DATE</b>
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to  
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

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CROCS, INC., a Delaware corporation; and

Plaintiff,

v.

SKECHERS U.S.A., INC., a Delaware corporation;

Defendant.

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**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF  
[REDACTED FOR PUBLIC FILING]**

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Plaintiff Crocs, Inc. ("Crocs"), for its Complaint against Skechers U.S.A., Inc. ("Skechers"), states as follows:

**NATURE OF THE ACTION**

1. This is an action at law and in equity for patent infringement, arising under the Patent Act, 35 U.S.C. §§ 1, et seq.
2. Skechers breached a settlement agreement between the parties by offering for sale and selling certain molded footwear and footwear accessories that infringe Crocs' patent rights, including but not limited to the Skechers Girls Swifts footwear, and which Skechers agreed to cease selling as of December 2010. Skechers' products are not manufactured by Crocs, nor is Skechers connected or affiliated with, or authorized by, Crocs in any way. This action seeks injunctive relief and monetary damages to remedy the harm to Crocs caused by Skechers' breach

of contract, fraudulent misrepresentations in connection with that contract, and infringement of Crocs' patent rights.

### **PARTIES, JURISDICTION AND VENUE**

3. Plaintiff Crocs, Inc. ("Crocs") is a Delaware corporation with a principal place of business at 6328 Monarch Park Place, Niwot, Colorado 80503.

4. On information and belief, Skechers U.S.A., Inc. ("Skechers") is a Delaware corporation with a principal place of business at 228 Manhattan Beach Boulevard, Manhattan Beach, California 90266.

5. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332, because this case is between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

6. The Court also has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b), because this case presents well-pleaded federal questions arising under the Patent Act, 35 U.S.C. §§ 1, *et seq.*

7. The exercise of *in personam* jurisdiction over Skechers comports with the laws of the State of Colorado and the constitutional requirements of due process because Skechers and/or its agents transact business and/or offer to transact business within Colorado.

8. Specifically, Skechers advertises, offers for sale, sells, and distributes molded footwear throughout the United States, including within the State of Colorado.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(b), as a substantial part of the events or omissions giving rise to Crocs' claims occurred within this District.

## **GENERAL ALLEGATIONS**

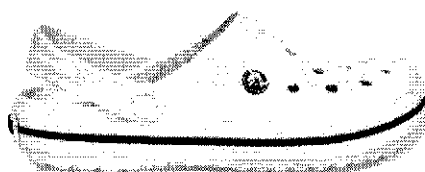
### **CROCS, INC.**

10. Crocs is a designer, manufacturer and marketer of Crocs™-branded footwear for men, women and children, which incorporate Crocs' proprietary closed-cell resin material, Croslite® – a substantial innovation in footwear comfort and functionality. This proprietary material enables Crocs to produce soft and lightweight, non-marking, slip and odor-resistant shoes, which are ideal for casual wear and recreational uses such as boating, hiking, fishing and gardening. Currently, Crocs offers a substantial number of models in a wide variety of colors. Crocs is constantly increasing the number of new models offered.

11. Crocs™ footwear is sold through a wide range of distribution channels, including department stores, specialty footwear stores, sporting goods retailers, and outdoor retailers. Crocs™ brand footwear is also sold through a variety of specialty channels, including gift shops, uniform suppliers, independent bicycle dealers, specialty food retailers, and health and beauty stores. Crocs distributes its products in over 125 countries worldwide. In addition, Crocs sells its footwear through its websites, including but not limited to, *www.crocs.com* and *www.crocsrx.com*, and in kiosks in shopping malls throughout the country. The Crocs brand has become well-known for the design, manufacture and sale of distinctive molded footwear and related products worldwide.

### **CROCS' CROCBAND™ FOOTWEAR DESIGNS**

12. In November 2009, Crocs launched a new molded footwear design, the CROCBAND™ model footwear. The CROCBAND™ model footwear combines the iconic look of Crocs™ molded footwear with a sporty midsole band evoking the retro sneaker style, as depicted in the following example:



13. The CROCBAND™ model footwear has been an enormous worldwide success. The CROCBAND™ footwear line have quickly become some of Crocs' best selling products. The distinctive visual design of the CROCBAND™ model footwear is protected by a design patent, U.S. Patent No. D610,784.

### **THE '784 PATENT**

14. Crocs is the owner of U.S. Patent No. D610,784 (the "'784 Patent"), entitled "Footwear," which was duly and legally issued by the U.S. Patent and Trademark Office on March 2, 2010. A true and correct copy of the '784 Patent is attached hereto as **Exhibit A**.

15. The '784 Patent claims an ornamental design for footwear as shown and described in the following figures:

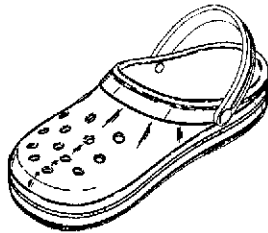


FIG. 1

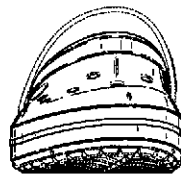


FIG. 2

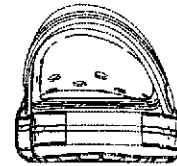


FIG. 3

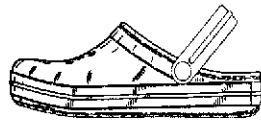


FIG. 4

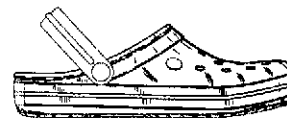


FIG. 5

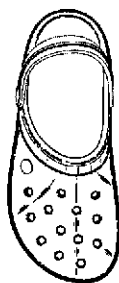


FIG. 6



FIG. 7

### **SKECHERS' INITIAL SALES OF INFRINGING SWIFTS FOOTWEAR**

16. Skechers manufactures, uses, offers for sale, sells, and/or imports molded footwear throughout the United States, including within the State of Colorado.

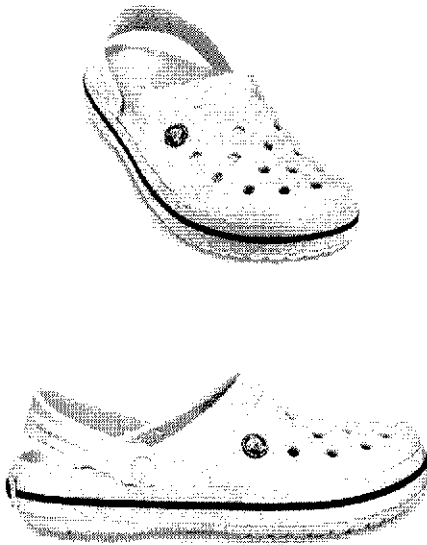
17. In the summer of 2010, Skechers launched the “Swifts” line of molded footwear. Skechers’ “Swifts” footwear line represented Skechers’ most recent in a series of attempts to trade off the goodwill and success embodied in Crocs’ distinctive footwear designs.

18. The Skechers website, located at *www.skechers.com* (the “Skechers Website”) described the “Swifts” footwear as having a “Soft, flexible Nano Lite (soft plastic foam) upper in a slip on low backed casual clog with solid or swirled color design, sculpted detail and adjustable

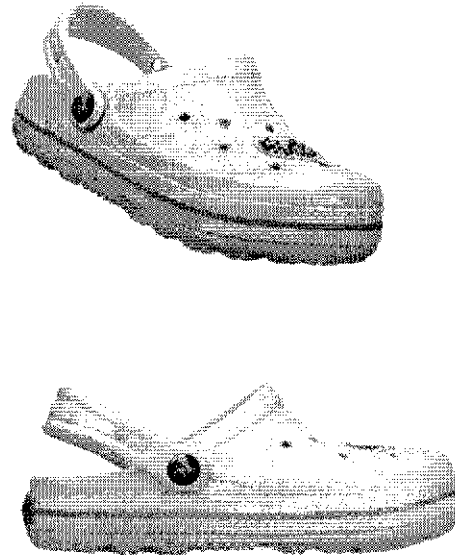
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**CROCS' AUTHENTIC  
CROCBAND™ FOOTWEAR**



**SKECHERS' UNAUTHORIZED  
IMITATION FOOTWEAR**



20. The molded footwear, including the “Swifts” footwear manufactured, used, offered for sale, sold, and/or imported by Skechers are not manufactured by Crocs, nor is Skechers associated or connected with Crocs, or licensed, authorized, sponsored, endorsed, or approved by Crocs in any way. Crocs has never provided any authorization, license, assignment, or other permission to Skechers to use the ‘784 Patent.

21. Skechers’ intentional and bad faith conduct is evident from the fact that the molded footwear depicted above are obvious imitations of well-known and successful Crocs styles, including but not limited to Crocs’ well-known CROCBAND™ design. Indeed, over the years Skechers has blatantly copied many of the details of Crocs’ original shoe designs.

22. When Crocs discovered in the summer of 2010 that Skechers was selling the Swifts line of products in stores and through its website, Crocs contacted Skechers and demanded that Skechers cease all further manufacture, offer for sale, sale, and/or distribution of the Swifts



footwear, as well as any other footwear that is substantially similar to the '784 Patent and destroy any remaining inventory of the Swifts footwear.

**SKECHERS BREACHES THE SEPTEMBER 2010 AGREEMENT**

23. Because Skechers agreed to cease selling the infringing Swifts footwear, Crocs and Skechers resolved this dispute without formal filing of litigation.

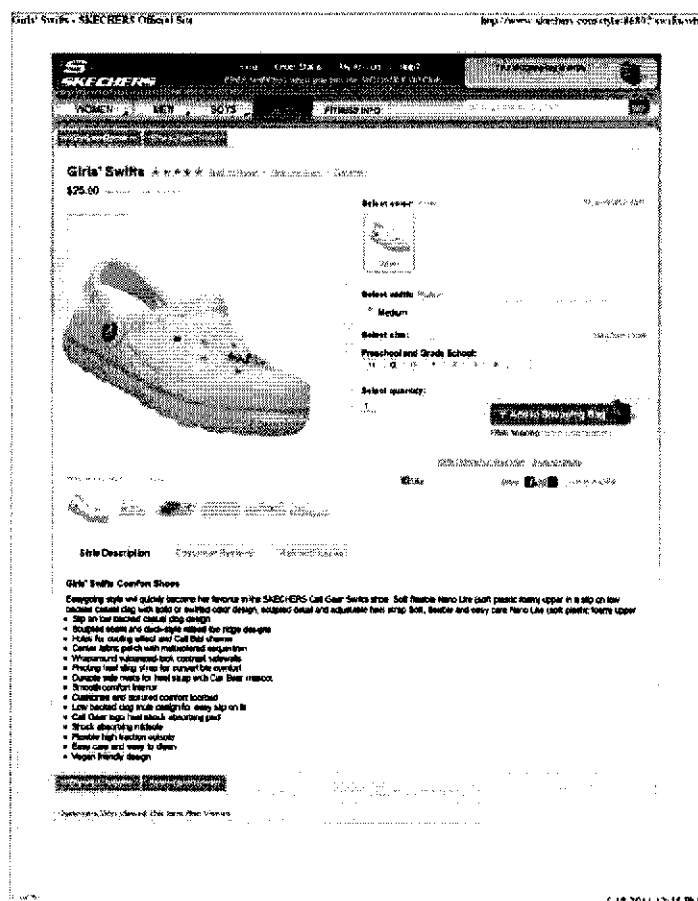
24. On September 23, 2010 entered into a Settlement Agreement, Release and Covenant Not to Sue (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit C**.

25. As part of the Settlement Agreement,

26. In the Settlement Agreement,

27.

28. Skechers breached the Settlement Agreement. Skechers recently offered for sale the same “Skechers Girls Swifts” footwear it offered in August 2010 in retail stores and on the Skechers Website. A true and correct copy of a screenshot from the Skechers Website for the “Girls’ Swifts” model, from May 18, 2011, is below and attached hereto as **Exhibit D**:

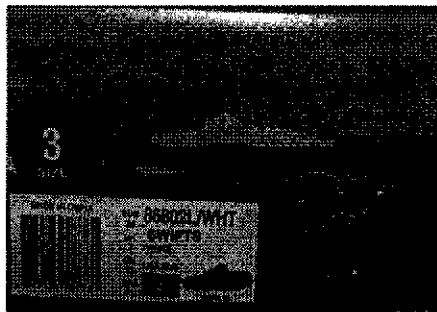


29. The Skechers Girls Swifts footwear is identified by Skechers as Swifts Style 86802. The Skechers Girls Swifts footwear currently available on the Skechers website are not

newly-manufactured footwear,

For example, a pair of Skechers Girls Swifts purchased through the Skechers Website in May of 2011 indicates on the inside shoebox cover that the Skechers Girls Swifts were manufactured in May of 2010, prior to the Settlement Agreement, as depicted below:

**SHOEBOX EXTERIOR**



**SHOEBOX INTERIOR**



30. Skechers' continued manufacture, sale, offering for sale, importation, and distribution of molded footwear, including without limitation, the Skechers Girls Swifts footwear, violates the Settlement Agreement and infringes the '784 Patent. These infringing actions have resulted in irreparable harm to Crocs for which Crocs has no adequate remedy at law.

31. Skechers' malicious intent to deceive and trade off of Crocs' good will is further displayed on the Skechers Website, where Skechers uses Crocs' well-known trademarks to market and sell unauthorized products.

32. For example, when a consumer types "CROCS" into the Skechers Website search function, the user is directed to the portion of Skechers' Website displaying the infringing "Swifts," as depicted in this May 19, 2011 screen capture:



confuse and mislead prospective purchasers and purchasers into believing that footwear sold by the Skechers is manufactured by, authorized by, or in some manner associated with Crocs, which it is not.

34. This deliberate, infringing use of Crocs' trademarks to confuse and deceive the public reveals Skechers' intent to trade off of Crocs' good will and reputation.

35. Skechers' intentional copying is additionally revealed in its copycat branding and advertising activities, such as naming its molded footwear material "nano lite," similar to Crocs' registered trademark "Croslite."

**FIRST CLAIM FOR RELIEF**  
Breach of Contract

36. Crocs hereby incorporates each of the preceding paragraphs as if fully set forth herein.

37. Crocs and Skechers entered into a written Settlement Agreement on September 23, 2010, as described above.

38. Crocs has performed all of its obligations under the Settlement Agreement.

39. Skechers materially breached the Settlement Agreement. Such material breaches include, without limitation,

40. As a result of Skechers' breach of the Settlement Agreement, Crocs has incurred and will continue to incur damages that are proximately caused by the acts and omissions of Skechers, as alleged herein.

41. In addition to the monetary damages incurred by Crocs, Skechers' acts and omissions have caused and will continue to cause immediate, irreparable harm to Crocs, for which Crocs does not have an adequate remedy at law. Accordingly, Crocs is entitled to injunctive relief.

**SECOND CLAIM FOR RELIEF**

Fraud in the Inducement

42. Crocs hereby incorporates each of the preceding paragraphs as if fully set forth herein.

43. In Paragraph 1 of the Settlement Agreement,

The Skechers Girls Swifts footwear were

offered for sale by Skechers prior to the Settlement Agreement,

44. On information and belief, in light of the fact that the Skechers Girls Swifts footwear were offered for sale by Skechers both prior to and after the date of the Settlement Agreement, Skechers' statement that

was a material misrepresentation of fact. Skechers made the

misrepresentation that

with knowledge of its falsity because Skechers at all times had knowledge of current

inventory numbers for all of its footwear products, including the Swifts footwear. On

information and belief, Skechers deliberately misrepresented the remaining inventory of Swifts

footwear products, specifically the Skechers Girls Swifts footwear, in order to induce Crocs to enter the Settlement Agreement.

45. Paragraph 1 of the Settlement Agreement provides that

46. In reliance on Skechers' misrepresentation regarding

Crocs entered into the Settlement Agreement.

47. Crocs' reliance on the representations and warranties of Skechers was justifiable and reasonable under the circumstances.

48. But for Skechers' misrepresentations regarding

Crocs would not have entered into the Settlement Agreement.

49. As a result of Skechers' misrepresentations, Crocs has incurred and will continue to incur damages that are proximately caused by Skechers' fraudulent acts and misrepresentations, as alleged herein.

**THIRD CLAIM FOR RELIEF**

Infringement of the '784 Patent – 35 U.S.C. § 1, et seq.

50. Crocs hereby incorporates each of the preceding paragraphs as if fully set forth herein.

51. Skechers has manufactured, used, offered for sale, sold, and/or imported, and continues to manufacture, use, offer to sell, sell, and/or import footwear products, including but

not limited to the “Skechers Girls Swifts footwear” products that infringe the ‘784 Patent, in violation of 35 U.S.C. § 271(a).

52. As a result of Skechers’ infringement of Crocs’ rights in the ‘784 Patent, Crocs has suffered and will continue to suffer damages in an amount to be proved at trial. In addition to actual damages, Crocs is entitled to recovery of Skechers’ profits pursuant to 35 U.S.C. § 289.

53. Skechers’ infringement of the ‘784 Patent has been with full knowledge of the ‘784 Patent and Crocs’ rights therein. Skechers’ continued infringement with full knowledge of ‘784 Patent and Crocs’ rights therein is willful.

54. Skechers’ willful infringement of Crocs’ rights in the ‘784 Patent warrants an award of treble damages under 35 U.S.C. § 284 and makes this an exceptional case warranting an award of Crocs’ reasonable attorney’s fees and costs under 35 U.S.C. § 285.

55. Skechers’ infringement of the ‘784 Patent has caused irreparable harm to Crocs, and will continue to do so unless enjoined. As a result, Crocs is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

#### **PRAYER FOR RELIEF**

WHEREFORE, Crocs prays for entry of judgment granting:

A. A preliminary and/or permanent injunction restraining Skechers, its officers, agents, servants, employees, directors, representatives, successors-in-interest, parent corporations, subsidiary corporations, affiliated companies, and all other persons, firms or entities acting in concert or participating with them, directly or indirectly, who receive actual notice of this judgment, from manufacturing, using, marketing, distributing, selling, offering to sell, and importing any molded footwear that infringes the ‘784 Patent;



B. An award to Crocs of its actual damages based on its claims in an amount according to proof;

C. An order, in the alternative, rescinding the Settlement Agreement, declaring the Settlement Agreement void *ab initio*, and awarding Crocs restitution for Skechers' fraud;

D. An award to Crocs of the total profits received or derived by Skechers from the manufacture, marketing, sale, offering for sale, and/or distribution of products bearing or using any copy or colorable imitation of the '784 Patent pursuant to 35 U.S.C. § 289;

E. A declaration that Skechers' infringement and other wrongful acts herein alleged be determined deliberate, willful, and in conscious disregard of Crocs' rights pursuant to 35 U.S.C. § 284;

F. A declaration that this case is exceptional, and, in conjunction therewith, an award of reasonable attorney's fees and costs pursuant to 35 U.S.C. § 285;

G. An award of treble damages against Skechers pursuant to 35 U.S.C. § 284 as a result of Skechers' deliberate and willful infringement in conscious disregard of Crocs' rights;

H. Compensatory damages;

I. A further order that:

- (i) Skechers be directed to file with this Court and serve on Crocs within a period of time to be determined by the Court after the service of any injunction order, a report in writing, under oath, setting forth in detail the manner and form in which Skechers has complied with the injunction;
- (ii) Skechers be required during this proceeding to preserve, surrender, and deliver up to Crocs all devices, footwear, footwear accessories, clothing,

printed matter, advertising, molds, plates, and designs provided by Skechers to Crocs that this Court finds to violate Crocs' rights;

- (iii) Upon the conclusion of this proceeding, Crocs is authorized by this Court to destroy all devices, footwear, footwear accessories, clothing, printed matter, advertising, molds, plates, and designs provided by Skechers to Crocs that this Court finds to violate Crocs' rights; and
- (iv) Skechers be required at the conclusion of this proceeding to destroy in its possession any and all remaining devices, footwear, footwear accessories, clothing, printed matter, advertising, molds, plates, and designs that this Court finds to violate Crocs' rights;

J. Pre-judgment and post-judgment interest as allowed by law; and

K. Such other and further equitable and legal relief as this Court deems just and

proper.

#### **JURY DEMAND**

Crocs hereby demands a trial by jury on all issues so triable.

Respectfully submitted this 19th day of May, 2011.

s/ Natalie Hanlon-Leh  
Natalie Hanlon-Leh  
Jared B. Briant  
Spencer B. Ross  
Faegre & Benson LLP  
3200 Wells Fargo Center  
1700 Lincoln Street  
Denver, Colorado 80203  
Phone: (303) 607-3500  
Email: nhanlon-leh@faegre.com  
jbriant@faegre.com  
sross@faegre.com

*Attorneys for Plaintiff Crocs, Inc.*

Plaintiff's Address:

6328 Monarch Park Place  
Niwot, Colorado 80503

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